IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9851 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANIBEN GANGARAM LODHA

Versus

COMMISSIONER OF POLICE

Appearance:

HL PATEL ADVOCATES for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. The Commissioner of Police, Rajkot City, Rajkot, passed an order on September 7, 1999, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining Daniben Gangaram Lodha of Rajhkot, under the

provisions of the said Act.

2. The detaining authority considered four offences registered against the detenu under the Bombay Prohibition Act and, ultimately, came to a conclusion that the detenu is a bootlegger and her activities are required to be prevented as they are found to be detrimental to public order. The authority also observed that it is not possible to resort to less drastic remedies.

3. The detenu, by this petition, challenges the order of detention on various counts. However, Mr. Patel, learned advocate for the petitioner, has restricted his arguments on the ground of delay in forwarding the representation by the detaining authority. He submitted that a representation was made on behalf of the detenu on 4/6-12-1999. The said communication was received by the detaining authority on 8-12-1999 and the detaining authority forwarded the same to the State Government on 13-12-1999. He submitted that, as such, the detaining authority was required to forward the representation as the detention order was already approved by the Government. This lapse of four days in forwarding the representation has resulted into denial of right of making an effective representation. The continued detention would, therefore, be rendered illegal and on that ground, the petition may be allowed.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition. He does not dispute the factual part of the date of representation, receipt of representation and forwarding of representation by the detaining authority.

5. Considering rival side contentions, it appears that the detaining authority was conscious of the fact that it has not to consider the representation on merits as the order of detention was already approved by the State Government and it was only required to forward the same. For forwarding the representation, the detaining authority has consumed four days, which has remained unexplained, as no affidavit in reply is filed by the detaining authority. This delay in forwarding the representation has infringed the right of the detenu of making an effective representation and can be said to be sufficient to vitiate continued detention. In this regard, decision in the case of Harish Pahwa v. State of U.P., A.I.R. 1981 SC 1126 can be profitably be considered. In view of this legal position, the petition deserves to be allowed.

6. In view of the above discussion, the petition is allowed. The impugned order of detention dated September 7, 1999, passed against the detenu is hereby quashed. The detenu-Dhaniben Gangaram Lodha is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

[A.L. DAVE, J.]

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